APPEAL NO. 040700
FILED MAY 18, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on March 2, 2004. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable repetitive trauma injury; that the date of injury pursuant to Section 408.007 was _____; that the appellant (carrier) is not relieved of liability under Section 409.002 because the claimant timely notified the employer of his injury pursuant to Section 409.001; and that the claimant had disability from _____, through the date of the CCH. The carrier appeals the hearing officer's determinations on all of the disputed issues, contending that the evidence is insufficient to support those determinations. No response was received from the claimant.

DECISION

Affirmed.

The claimant claimed that he sustained a repetitive trauma injury as the result of performing his work activities for the employer and that he had disability as a result of the injury. The claimant had the burden to prove that he sustained a repetitive trauma injury as defined by Section 401.011(36) and that he had disability as defined by Section 401.011(16). The issues of repetitive trauma injury and disability presented fact questions for the hearing officer to resolve from the evidence presented at the CCH. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's determinations in favor of the claimant on the issues of compensable repetitive trauma injury and disability are sufficiently supported by the claimant's testimony and by the reports of the treating doctor and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant also had the burden to prove that he timely notified his employer of the claimed injury. This also presented a fact question for the hearing officer to resolve. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury. Section 408.007 provides that the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. Section 409.001(a)(2) provides that if the injury is an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. The hearing officer determined that the date of the claimant's injury under Section 408.007, the date the claimant knew or should have known that the

disease may be related to the employment, was _____. Since the parties stipulated that on _____, the claimant reported his injury to his employer, the hearing officer concluded that the carrier is not relieved of liability under Section 409.002 because the claimant timely notified his employer pursuant to Section 409.001.

In Texas Workers' Compensation Commission Appeal No. 002795, decided January 12, 2001, the Appeals Panel noted that the date of injury for an occupational disease is not necessarily the date of the first symptom and that the time period for notice begins to run when a reasonable person would recognize the nature, seriousness, and the work-related nature of an injury. In Texas Workers' Compensation Commission Appeal No. 022210, decided October 10, 2002, the Appeals Panel noted that it is reasonable prudence, not extraordinary prudence, that is the standard for determining when a person who did not actually know of a diagnosis should nevertheless have understood that there may be a work-related injury.

In the instant case, the hearing officer found that although the claimant was aware in July of 2003 that his pain was related to his employment duties, he thought his problems were trivial and did not realize that his problems were serious until _____, when he consulted a health care provider. The fact that an employee attributes pain to work activities does not necessarily mean that the employee knows that he has an injury. *See* Texas Workers' Compensation Commission Appeal No. 982944, decided January 21, 1999, and Appeal No. 002795, *supra*. In the decision cited by the carrier, Texas Workers' Compensation Commission Appeal No. 001552, decided August 22, 2000, the date of injury found by the hearing officer was the date the injured employee was actually diagnosed by a doctor as having carpal tunnel syndrome and thus we do not believe that that decision compels a determination in the instant case that the claimant's date of injury under Section 408.007 was in July 2003, which was several months before the claimant went to a doctor, as contended by the carrier. In Appeal No. 001552, *supra*, the Appeals Panel determined that the injured employee did not have good cause for failing to timely report his injury to his employer. Although there is conflicting evidence regarding the date of injury under Section 408.007, we conclude that the hearing officer's determination that the date of injury was _____, and that the claimant timely notified his employer of his injury pursuant to Section 409.001 are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **HARTFORD INSURANCE COMPANY OF THE MIDWEST** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Robert W. Potts
Appeals Judge

CONCUR:

_____
Margaret L. Turner
Appeals Judge

_____
Edward Vilano
Appeals Judge